ONG HOCK TIN

v.

INSPECTOR-GENERAL OF POLICE & ANOR.

HIGH COURT MALAYA, PENANG
WAN ADNAN J
[CRIMINAL APPLICATION NO. 44-6-89]
10 AUGUST 1989

CRIMINAL PROCEDURE: *Detention under s. 6(1) of the Dangerous Drugs (Special Preventive Measures) Act 1985 - Detention challenged on 3 grounds - Breach of s. 16 of the Act - Delegation of powers to civil servants - Service of detention orders.*

The applicant was detained pursuant to an order made under s. 6(1) of the Dangerous Drugs (Special Preventive Measures) Act 1985.

The applicant filed a writ of *habeas corpus* challenging the detention order on three grounds namely:

(i) There has been a breach of s. 16 of the Act.

(ii) Delegation of powers to civil servants not proper.

(iii) All detention orders made were not served on the applicant.

Held:

[1] The removal of the applicant to the Muar Hospital was with the authority of the superintendent who had the necessary power to give. Hence, there has been no breach of s. 16 of the Dangerous Drugs (Special Preventive Measures) Act 1985.

[2] There is no requirement that the detention orders must be served on the detainee under s. 3 of the Act.

[Application dismissed]

Case referred to:
Patto v. Menteri Hal Ehwal Dalam Negeri & Anor. [1989] 2 CLJ (Rep) 224

Legislation referred to:
Dangerous Drugs (Special Preventive Measures) Act 1985, ss. 3, 3(2)(a), (2)(b), (2)(c), 6(1), 9(2)(b), 16, 16(1)
Delegation of Powers Ordinance 1956, s. 5
Emergency (Public Order and Prevention of Crimes) Ordinance 1969, ss. 13(1), 23, 23(1)

For the applicant - Darshan Singh; M/s. Darshan Singh & Co. and Ranjit Singh; M/s. Jagjit Singh & Co.
For the respondent - Norbahari; Jabatan Peguam Negara

JUDGMENT

Wan Adnan J:

This is an application for an order that a writ of *habeas corpus* be issued for the release of the applicant.

The applicant was detained pursuant to an order made under s. 6(1) of the Dangerous Drugs (Special Preventive Measures) Act 1985 (the Act). The detention orders is as follows:

Akta Dadah Berbahaya
(Langkah-Langkah Pencegahan Khas), 1985 (Akta 316)

Perintah Tahanan
(Seksyen 6(1))

Kepada:
Penguasa Kanan,
Pusat Pemulihan Akhlak,
Muar - Johor.

Ketua Polis Negara,
Bukit Aman,
50560 Kuala Lumpur.

Semua Pegawai Polis Diraja Malaysia yang berkenaan.

Bahawasanya saya, Menteri Dalam Negeri berpuashati yang Perintah ini adalah perlu dibuat ke atas orang yang namanya tersebut di bawah ini dengan tujuan hendak mencegah beliau daripada melakukan apa-apa aktiviti yang berhubungan dengan atau yang melibatkan pengedaran dadah yang berbahaya.

Nama	Nombor Kad Pengenalan
Ong Hock Tin	0284512

Oleh yang demikian, pada menjalankan kuasa yang diberi kepada saya di bawah s. 6(1) Akta Dadah Berbahaya (Langkah-langkah Pencegahan Khas) 1985, maka saya mengarahkan dengan Perintah ini supaya orang yang namanya tersebut di atas ditahan selama dua tahun dari 18 haribulan Ogos 1987 di Pusat Pemulihan Akhlak, Muar, Johor atau di mana-mana tempat lain sebagaimana yang diarah oleh saya dari semasa ke semasa. Ditandatangani pada 14 haribulan Ogos 1987.

t.t.
(Dato Megat Junid bin Megat Ayob)
Timbalan Menteri Dalam Negeri Malaysia

[Rujukan: KDN.S.205/1182/5-240)

The statement of the grounds on which the order was made and the allegations of fact on which the order was based that was served on the applicant as required by s. 9(2)(b) of the Act is as follows:

Akta Dadah Berbahaya (Langkah-Langkah Pencegahan Khas), 1985
Nama Orang Tahanan: Ong Hock Tin
No: K/P 0284512

Alasan-Alasan Yang Atasnya Perintah Itu Dibuat:

Bahawa kamu pernah ada terlibat dengan aktiviti yang berhubung dengan pengedaran dadah berbahaya.

Tuduhan-Tuduhan Yang Perintah Itu Berasaskan:

1. Bahawa kamu pada penghujung tahun 1979 pernah mengadakan perbincangan dengan seorang pembekal candu mentah dari Thailand mengenai aktiviti pengedaran dadah.

2. Bahawa kamu pada tahun 1980 telah 2 kali membekal candu mentah setiap kali sebanyak 10 ketul kepada seorang pengedar di Pulau Pinang.

3. Bahawa kamu dalam tahun 1980 telah 4 kali menguruskan bekalan candu mentah setiap kali di antara 20-30 ketul untuk adik kamu Ong Hock Sun yang menjalankan kegiatan pengedaran di Kuala Lumpur.

4. Bahawa kamu di sepanjang tahun 1982 telah 5 kali menguruskan bekalan candu mentah setiap kali di antara 5 hingga 30 ketul dari pembekal Thailand kepada adik kamu Ong Hock Sun yang menjalankan kegiatan di Kuala Lumpur.

5. Bahawa kamu telah 2 kali menguruskan bekalan candu mentah sebanyak 20 ketul dari pembekal Thailand yang dibekalkan kepada adik kamu Ong Hock Sun di Kuala Lumpur pada tahun 1983.

6. Bahawa kamu dalam tahun 1984 telah 5 kali menguruskan pembekalan candu mentah setiap kali di antara 20-35 ketul dari beberapa orang pembekal Thailand yang dibekalkan kepada adik kamu Ong Hock Sun di Kuala Lumpur.

7. Bahawa kamu telah 2 kali dalam tahun 1985 menguruskan bekalan candu mentah sebanyak 20 dan 30 ketul setiap kali dari pembekal Thailand yang dibekalkan kepada adik kamu Ong Hock Sun di Kuala Lumpur.

8. Bahawa kamu dalam tahun 1986 telah 2 kali menguruskan bekalan candu mentah sebanyak 18 dan 22 ketul dari pembekal Thailand yang dibekalkan kepada adik kamu di Kuala Lumpur.

9. Bahawa kamu dalam bulan Mei 1987 telah menguruskan bekalan sebanyak 20 ketul candu mentah dari pembekal Thailand yang dibekalkan kepada adik kamu di Kuala Lumpur.

Dengan Arahan,
Menteri Dalam Negeri

t.t.
(Wan Ali Bin Wan Husin)
Penolong Setiausaha,
Kementerian Dalam Negeri.

Tarikh: 14hb. Ogos 1987
(Rujukan: KDN.S. 205/1182/5-280)

At the hearing of the application the learned Counsel for the applicant proceeded only with three grounds namely:

1. There has been a breach of s. 16 of the Act.

2. Delegation of powers to civil servants not proper.

3. All detention orders made were not served on the applicant.

Ground No. 1

It was submitted by Counsel that there has been a breach of s. 16 of the Act in that the applicant was taken out of Pusat Pemulihan Akhlak Muar and kept in Muar Hospital for one week from 9 November 1987 to 16 November 1987 without the order of the Minister.

Section 16(1) of the Act states as follows:

16(1) On proof to his satisfaction that the presence at any place of any person detained under subsection (1) of s. 6 or under subsection (1) of s. 11A or lawfully in the custody of the police or confined in any prison whether under subsection (1) of s. 6 or under subsection (1) of s. 11A or under an order of any Court or otherwise howsoever, and notwithstanding any order of any Court or other authority whatsoever, is required in the interests of justice,

> or for the purpose of any public or other inquiry, or in the national interest, or in the interests of the person detained, in custody, or confined, the Minister may order that such person be taken to that place.

In reply the learned Senior Federal Counsel said that the Minister had delegated his power to the superintendent of the centre under s. 5 of the Delegation of Powers Ordinance 1956. This delegation was published in P.U.(B) 195 dated 7 March 1979. The delegation was in respect of the power under s. 13(1) of the Emergency (Public Order and Prevention of Crimes) Ordinance 1969 (the Ordinance) but by virtue of s. 23 of the Act that delegation is applicable in respect of the power of the Minister under s. 16 of the Act.

Section 23(1) of the Act states as follows:

> 23(1). All rules regulations made, and directions given, under the Ordinance and in force immediately before the commencement of this Act shall, in so far as they are not inconsistent with the provisions of this Act, be deemed to have been made or given under this Act by the appropriate authority having power to make or give them under this Act (regardless whether the power under this Act is expressed as a power to make rules or a power to make regulations on the subject concerned), and shall, accordingly, have effect for the purposes of this Act with all such modifications as may be necessary to have them accord with the provisions of this Act, until such time as they are replaced by rules, regulations or directions made or given under this Act by the appropriate authority having power to make or give them under this Act.

The provisions of s. 16 of the Act are the same as the provisions of s. 13 of the Ordinance. Under both sections the Minister has the power to make the order. In the exercise of his power under the Delegation of Powers Ordinance he had delegated that power under s. 13 of the Ordinance to the superintendent. This delegation of his power to the superintendent is in my view a direction within the meaning of s. 23 of the Act and therefore the delegation is deemed to be also a delegation under the Act.

The removal of the applicant to the Muar Hospital was with the authority of the superintendent who had the necessary power to give. The removal was thus lawful.

This ground must therefore fail.

Ground No. 2

It was submitted that the officer Wan Ali bin Wan Hussin did not have the necessary authority to sign the statement of the grounds on which the order was made and the allegations of fact on which the order was based. I had occasion to deal with this point in the case of *Patto v. Menteri Hal Ehwal Dalam Negeri & Anor.* [1989] 2 CLJ (Rep) 224.

The ground must also fail.

Ground No. 3

It was submitted by Counsel that the applicant was not informed of the detention under s. 3(2)(a), (b) and (c) of the Act. The detention orders must be served on the applicant.

Section 3 of the Act gives powers to the police to arrest without warrant and detain any person for the purpose of investigations under the Act. Subsection (2) says that such person may be detained in police custody for a period not exceeding sixty days provided the proviso's (a), (b) and (c) have been complied with. There is no requirement to serve the detention authority on the detainee. The detention will be lawful so long as there is authority in accordance with proviso's (a), (b) and (c).

In this case there has been proper authorisation in accordance with the proviso's (a), (b) and (c).

This ground must also fail.

The application is therefore dismissed.

Also found at [1990] 1 CLJ 308